

California Regional water Quality Control Board
Santa Ana Region
November 18, 2005

ITEM: 13

SUBJECT: Clean Water Act Section 401 Water Quality Standards Certifications and CEQA Determinations

DISCUSSION:

Applicants for Clean Water Act Section 401 Water Quality Standards Certifications¹ must show that they have complied with the requirements of the California Environmental Quality Act (CEQA) before a Certification can be issued by the Executive Officer. On several occasions, CEQA compliance has not been clearly demonstrated, necessitating further Board staff inquiry and resulting in delays in the consideration of Certification requests. In some situations, no CEQA documents have been made available or it is not clear that the documents were properly distributed for review by responsible agencies. Board staff must then request that project proponents document whether and how lead agencies have satisfied CEQA requirements. In some cases, Board staff have questioned the adequacy of the analysis of environmental impacts provided in the CEQA documents. Finally, in some cases, the issue has been the propriety of the proposed use of CEQA categorical exemptions. This has caused Certification applicants' consternation and project delays while CEQA issues raised by Staff are addressed with the lead agency. This tension is heightened when Staff finds that a faulty CEQA process has been followed for a project where the CEQA lead agency and the Certification applicant are the same party, as in the case of a public agency undertaking a project that requires certification. Staff will discuss a recent case where this has occurred, and also discuss the larger issue of how staff should address situations where we are confronted by faulty or inadequate CEQA determinations by certification applicants.

¹ Certifications are required before the US Army Corps of Engineers can issue CWA Section 404 permits for the discharge of fill or dredged material into waters of the U.S. Section 404 permits are often required for land developments that affect surface waters falling within the jurisdiction of the USACE.